MEMBERS ELECTED TO THE PUBLIC ACCOUNTS COMMITTEE AND THE STANDING FINANCE COMMITTEE.

President : I have to announce to the House the result of the elections which were held last evening. Mr. K. N. Kesavan Namputiripad has secured the highest number of votes to the Public Accounts Committee and he will therefore be declared elected as a member of that Committee. In regard to the Standing Finance Committee, Mr. K. P. Nilakanta Pillai has secured the highest number of votes and he will therefore be declared elected to that Committee.

THE TRAVANCORE PROVIDENT INSURANCE SOCIETIES REGULATION (AMENDMENT) BILL.

Mr. M. N. Paramesvaran Pillai : Sir, I move that the Travancore Provident Insurance Societies Regulation (Amendment) Bill, as passed by the Sri Mulam Assembly, be taken into consideration.

Mr. P. Padmanabhan Tampi : I second the motion.

The motion was carried.

The question that clauses (1), (2) and (3), and the preamble do form part of the Bill was then put and carried.

Mr. M. N. Paramesvaran Pillai : I move that the Bill be passed into law.

Mr. P. Padmanabhan Tampi : I second the motion.

The motion was carried.

THE TRAVANCORE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. S. Piraviperumal Pillai : Sir, I move that the Travancore Hindu Law of Inheritance (Amendment) Bill, as passed by the Sri Mulam Assembly, be taken up for consideration.

Mr. K. N. Kesavan Namputiripad : I second the motion.

The motion was carried.

Mr. G. Narayana Aiyar : Sir, I propose to move amendments to the various clauses of the Bill. With your permission, I shall first take up clause (2). Under clause (2) son's daughter, daughter's daughter, and sister's son, alone are included to rank in the order of succession. I request to include the son's widow

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[Mr. G. Narayana Aiyar.]

also and to give her preference to the other heirs. The son's widow practically is the son's daughter's mother. To exclude her, while including her daughter, is unhappy. A widow is a co-parcener under the Hindu law as recognised in Travancore, whose rights are recognised in the Travancore Courts. To leave her out of consideration is unhappy. So, I propose the following amendment :—

"In clause (2) after the word "A" insert the words "son's widow".

Mr. M. N. Paramesvaran Pillai : I second it.

Mr. K. P. Nilakanta Pillai : May I ask whether the son's widow is recognised as an heir under the Hindu Law?

Mr. G. Narayana Aiyar : The son's widow is recognised as a co-parcener under the Hindu Law in Travancore. I would refer to 5 T. L. R. 45 F. B.

Mr. V. S. Arumukham Pillai : May I know whether by the son's widow, that the member refers to, is a divided son's widow or an undivided son's widow?

Mr. G. Narayana Aiyar : There is no distinction. Whatever may be her status, she has to be included and given a place before the heirs referred to in the clause since she is nearer than the others.

Mr. S. Piraviperumal Pillai : Sir, I am sorry I have to oppose the amendment. The present Bill is merely a reproduction of the statute in British India which was introduced by Justice Seshagiri Aiyar, an eminent Judge of the Madras High Court. The British Indian Statute has followed the law of Mitakshara as settled by British decisions. It may be seen that, in Travancore, Madras decisions are followed more than that of Bombay. It may also be observed that the trend of judicial decision in Travancore has always been to follow Madras except in one notable direction, namely, in respect of co-parceners as was observed by Mr. Narayana Aiyar. Therefore, to introduce amendments in a Bill which is the same as the Statute in British India, and which has been working very satisfactorily there from 1929, would be to introduce something novel and would be not keeping up uniformity which is the intention of this Bill. It is to avoid uncertainty and divergence as far as possible that this Bill has been introduced here.

Mr. G. Narayana Aiyar : May I know from the member how the introduction of the son's widow will introduce uncertainty?

Mr. S. Piraviperumal Pillai : It has already been observed by one of the eminent judges of our High Court in 6 T. L. R. 943.

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Mr. Kayalam Paramesvaran Pillai: Is the son's widow an heir now under the Bill ?

Mr. S. Piraviperumal Pillai : No, Sir.

Mr. Kayalam Paramesvaran Pillai : If the daughter be an heir why not mother be an heir?

Mr. S. Piraviperumal Pillai : That is a question of opinion. The son's widow may be the widow of an undivided son or a divided son.

Mr Kayalam Paramesvaran Pillai : Cannot the son's daughter be a divided son's daughter or an undivided son's daughter ?

Mr. S. Piraviperumal Pillai : These four specific cases have already been included in the Bill. The object of the Bill is not to increase the number of heirs but only to change the order of the existing heirs.

Mr. Kayalam Paramesvaran Pillai : If the daughter be an heir, why should not the mother be an heir ?

Mr. S. Piraviperumal Pillai : As I have submitted already, we are not concerned now with increasing the heirs or bringing in new heirs. All that we are concerned with in this Bill is to retain uniformity with British India. Nowhere is a widow taken as an heir. As I said, in the case of an undivided son there are decisions in Travancore. But the divided son's widow is not recognised as an heir either in Travancore or in Madras. The daughter-in-law is not recognised as an heir to the father-in-law. It is true that in Bombay the deceased son's widow is recognised as an heir. If we accept this amendment we will be adding one more heir to the class of heirs contemplated in this Bill. If we accept the amendment we will have to include, consequently ever so many widows, the son's widow, the grandson's widow, the great grandson's widow and so many others.

As has already been stated the object of this Bill and the British Indian Statute is not to make new female heirs under the Mithakshara Law but merely to give a better order to certain specified female heirs who have been already recognised as female heirs but who had very little chance of succeeding at any time for the reason that under the existing law the order of their succession was so low in the scale.

Therefore, Sir, if we accept the amendment and introduce the son's widow we create a new female heir not recognised till now in British India or Travancore, and we may have, in fairness to all, to include the widows of the other Gothraja Sapindas like brother, grandson, uncle etc. This, of course, is not the ambition of the present Bill.

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Mr. G. Narayana Aiyar : What is the nature of the Gothraja Sapindas ?

Mr. S. Piraviperumal Pillai : As I submitted, the Bill contemplated only to give a better place in the order of succession.

Mr. Kayalam Paramesvaran Pillai : Should we not bring the law into conformity with British Indian enactment ?

Mr. S Piraviperumal Pillai : Of course.

Therefore in this enactment which is extremely limited to four classes of heirs as in British India, there is no room for considering the heritable claims of any widows of any Gothraja Sapinda or of their place in the order of succession.

I therefore would request my friend Mr. G. Narayana Aiyar to withdraw his amendment.

Mr. V. S. Arumukham Pillai : I would also like to add a few words in this connection in opposing the amendments proposed by Mr. Narayana Aiyar. As my friend Mr. Piraviperumal Pillai said, the object of the Bill is to bring the law here into conformity with that obtaining in British India. This Bill is a close copy of the Madras Act II of 1929 introduced by an eminent Judge of the High Court, Mr. Seshagiri Aiyar. In understanding the scope of the amendment brought forward by Mr.Narayana Aiyar we have first of all to understand the scope of the Bill. Now, the Bill as it is, aims at giving a preferential claim to some of the heirs who are already heirs in the line of succession. The son's daughter, the daughter's daughter, sister, sister's son, all these are already heirs under the existing law and the amendment proposes to give them a preferential claim. As it is, they have only a remote chance. But by this amendment a new heir is introduced. A son's widow is not recognised as a heir at all either in Travancore or anywhere in British India. But a son's widow is recognised in Travancore alone in 5 T. L. R. page 45 that is, a predeceased son's widow is treated as a co-parcener. Even that decision is canvassed against and, I understand, a case is pending in the High Court now in regard to this matter. Excepting that solitary instance in 5 T. L. R. 45 where a predeceased son's widow is recognised as co-parcener, nowhere either in British India or in Travancore, a son's widow is recognised as heir.

Mr. Kayalam Paramesvaran Pillai : According to the Bill does it not make a daughter to rule the estate when her mother is alive ?

Mr. V. S. Arumukham Pillai : Yes.

If the son's widow is to be introduced as a heir it follows that the widows of other Gotraraja Sapindas should also be included in the Bill. This Bill is not for considering the heritable claims of so

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many people like this. This Bill is limited, as I said, only to four classes of heirs. In this limited enactment it is not possible to consider the heritable claims of so many others. If the object of my friend is to safeguard the interests of a predeceased son's widow who is already a co-parcener according to judicial decisions, this is not the place for him to safeguard such interests. Therefore I oppose the amendment.

Mr. Kayalam Parameswaran Pillai: Sir, Government will not intervene in this controversy with which, perhaps, sentiments of the community are also intermingled to a great extent. But, personally speaking, I must say that I have a great deal of sympathy with Mr. Narayana Aiyar's amendment. His object, as he stated, is to give the mother also a place in the inheritance, whereas the daughter alone is brought in now. The Bill provides only for the daughter as in British India; and it is urged that our enactment should be uniform with that in British India. To a question put by me as to why the daughter should be given a place in disregard of the mother, the answer was that the desire at present is only to bring our law into conformity with that obtaining in British India. That no doubt is a very weighty reason. But it was pointed out here that under the rulings of our High Court, a widow is sometimes given a place superior to that in British India. That is a matter which the House has to consider. I was doubting whether by the amendment of Mr. Narayana Aiyar he was trying to nullify the position given to the widow by the High Court. Probably he is not really intending that.

There is another point that may perhaps be adverted to. Ordinarily speaking, the son takes charge of the estate or family after the father's lifetime. If there is no son, then the widow takes charge of the estate; and if there is no widow, if the widow dies, then and then only the daughter comes in. In the case of a son's widow however, her daughter, *i e*, the son's daughter too gets precedence under the Bill. Thus in effect the daughter rules while her mother is alive. Mr. Narayana Aiyar's amendment wants apparently to prevent it. However, Sir, it is all a very ticklish question, one on which the sentiment of the community has a good deal to say and I shall not dogmatise, and Government will not take sides. Government members will vote according to their personal predelictions, and Government will not put in their weight either way.

President: Government members can vote as they like.

Mr. G. Narayana Aiyar: I am not at all convinced with the arguments advanced by my friends who spoke against the amendment. I shall show from the British Indian decisions that

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[Mr. G. Narayana Aiyar.]

some provisions in the Hindu Law are very much defective in regard to succession of *bandhus* and that they stand in need of amendments. I am sure the honourable members who opposed the motion will agree with me when I read some portions in a recent judgment by the Honourable Justice Sir Ramesam. It was a decided case of 1934. It is reported in 1934 A. L. R. Madras, at page 632. After dealing with the facts of the case, His Lordship at page 635 states that the Act is faulty and defective in that it did not provide for a man's cognate descendants and suggests amendments. His Lordship has observed as follows :—

> "I may add that it is so much in accordance with the sentiments of Hindus that a man's descendents should be preferred to his collaterals, that the Hindu Law of Inheritance Amendment Act II of 1929, while it followed the right policy in elevating a son's daughter, daughter's daughter, sister, and sister's son above *sagotra sapindas*. it is faulty, in that it does not provide for the man's cognate descendants, namely son's daughter's son and daughter's daughter's son and daughter's son's son being given preference to the sister and sister's son who are only collaterals and it would be in accordance with the sentiments of Hindus if the Act is amended on such lines. Even on the principle of spiritual benefit, one's son's daughter's son should be preferred to a sister's son ; and even on any non-Hindu mode of computation to the steps of propositus and the claimants, a bandhu descendent above mentioned cannot be inferior to the sister's son and ought to precede him if not the sister. "

Again, the recent amendment of the Hindu Law of Inheritance Act II of 1929 has given rise to sharp difference of judicial opinion in British India as to its effect.

When it is seen that the tendency in British India after the passing of the Act is to include the son's widow also that change should be incorporated in our pending Bill also. Therefore I submit that this amendment of mine ought to be allowed.

Mr. S. Piraviperumal Pillai : May I know from the member if the son's widow is accepted should not the other relations' widows, that is, *gothraja sapindas* also be included ?

Mr, G. Narayana Aiyar : Yes. They have also to be included but the son's widow is a nearer claimant than the others. Therefore we will look to this first and then the other amendments may be taken up as and when they arise.

Mr. S. Piraviperumal Pillai : When we legislate for one set of people, is it not fair to legislate for others of the same category ?

Mr. G. Narayana Aiyar : That will be going too far. If the member could kindly read Section 8 of the Bill it will be seen that the heir proposed gets only a life interest. None of the other widows come in so near as the son's widow.

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The Bill as it stands only gives a limited interest and not an absolute interest. A son's widow is entitled only to enjoy the property as long as she is alive.

Mr. S Piraviperumal Pillai: Should not the claims of other widows also be considered?

Mr. G. Narayana Aiyar: But then the son's widow gets the nearer claim than the others.

Mr. K. P. Nilakanta Pillai: According to Hindu Law is there any leading principle to take the son's widow as a direct heir?

Mr. G. Narayana Aiyar: She is proposed to be given only an enjoyment for her life, she having a nearer claim.

Mr. V. S. Arumukham Pillai: May I know whether an undivided son's widow is recognised anywhere?

Mr. G. Narayana Aiyar: She is allowed to enjoy the property as a co-parcener along with other widows if any, under the rulings of our High Court referred to by me before and under the customary law of Travancore. Widows of *gotraja sapindas* do inherit in certain cases. The first in the series of widows of *gotraja sapindas* is the son's widow and so she is also sought to be included.

She has to be given some preference over her daughters who are included in the Bill.

Mr. V. S. Arumukham Pillai: May I know from the member whether a divided son's widow is recognised as an heir to the intestate anywhere in British India or Travancore.

Mr. G. Narayana Aiyar: She is regarded as a co-parcener. Here what I propose is that she must be given a life interest and placed as an heir before her daughter.

President: Moved and seconded that in clause 2 after the word "A" insert the words "son's widow".

The motion was put to the vote of the House and carried.

Mr. S. Piraviperumal Pillai: I demand a poll.

A poll was taken and the House divided as follows;

AYES—16.

1	Mr.	Kochikal P. Balakrishnan Tampi	10	Mr.	N. K. Padmanabha Pillai
2	,,	M. Govindan	11	,,	P. Padmanabhan Tampi
3	,,	J. John Kattakayam	12	,,	M. N. Parameswaran Pillai
4	,,	K. N. Kesavan Namputiripad	13	,,	K. Rama Varma Raja
5	,,	Tariatu Kunjitomman	14	,,	N. Ramakrishna Pillai
6	,,	K. Madhavan Pillai	15	,,	E. P. Varghese.
7	,,	M. P. Madhavan Pillai	16	,,	A. N. Visvanatha Pillai
8	,,	G. Narayana Aiyar			
9	,,	M. N. Narayana Menon			

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NOES—6.

1	Mr. K. Sankaralingom Pillai	4	Mr. S. Piraviperumal Pillai
2	,, C. S. Krishnasvami Aiyar	5	,, K. Padmanabha Panickar
3	,, V. S. Arumukham Pillai	6	,, K. P. Nilakanta Pillai

NEUTRALS—13.

1	Mr. Kayalam Parameswaran Pillai	8	Mr. A. Kumara Pillai
2	,, M. Govinda Pillai	9	Rao Sahib Dr. N. Kunjan Pillai
3	,, R. Pitchu Aiyengar	10	Mr. S. Adam Sait
4	,, R. Dhanukoti Pillai	11	,, C. M. Joseph
5	,, G. B. E. Truscott	12	,, Hajee Hassan Sait
6	,, K. George	13	,, H. O. L. Marikar
7	,, James Simpson		

President: The question is whether clause 2 as amended do form part of the Bill.

The motion was carried.

Clause 3.

Mr. N. Ramakrishna Pillai (*Vaikam* cum *Shertallai*): Before the member introduces the amendment I wish to know whether it is open for a member to point out some necessary amendments in clause 3. There is no formal motion. A consequential amendment is necessary to clause 3, in view of the amendment to Clause 2.

President: That may be done in the third reading of the Bill.

Mr. N. Ramakrishna Pillai; Can I point out that there is defect in the drafting of the Bill. I have not sent any motion.

President: You will do that after the amendment is got through. If there is any error in the drafting, or any consequential amendment, that may be done in the third reading.

Mr. G. Narayana Aiyar: In clause 3, I move the following amendment:—

Sub-clause (*c*), omit the full stop after the end of the sub-clause, insert a comma, and add the word "or" and add the following as sub-clause (*d*):

"(*d*) divest any estate already vested in an heir according to the law for the time being in force".

Add the following as sub-clause (*e*)

"(*e*) or affect any rule of law by which the widows of members of a joint family are entitled to be in possession on the death of the last surviving male member".

This is practically a safeguarding clause and accepted unde the Hindu Law "that an estate once vested shall not be divested."

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In the absence of such a provision it may be argued and construed later on in law courts in various ways. It is to prevent that, that I want to insert these words.

Mr. S. Piraviperumal Pillai : Unless it is settled will it have retrospective effect?

Mr. G. Narayana Aiyar : Arguments may be put forward on both sides and in ingenious judgments we find all sorts of interpretations. So to avoid all such controversies it is better to have such a saving clause so that the estates may be protected. That is the object of clause (*d*).

As regards clause (*e*) my object is to safeguard the rights of widows. According to the law prevailing in British India the widow of the last male owner is entitled to enjoy the properties. The other widows have not such a right in British India. There is a special custom prevailing in Travancore as well as a definite High Court ruling. It is to see that the same is preserved and that it is not impaired in any way that I propose to add clause (*e*) also.

Mr. Kayalam Paramesvaran Pillai : In view of the portion in Clause 1, sub-clause (2) will the member kindly explain why the second amendment is necessary?

President : I think it is not right to move the two amendments together. The member will confine his amendment first to clause (*d*) and then to clause (*e*).

Mr. G. Narayana Aiyar : Yes, Sir, Add the following as sub-clause (*d*) :—" Divest any estate already vested in an heir according to the law for the time being in force ".

Mr. M. P. Madhavan Pillai : I second it.

Mr. S. Piraviperumal Pillai : I am sorry I have to oppose this amendment. The present Bill is not retrospective but only prospective. Therefore there is no necessity for such a provision. All estates that are vested prior to the introduction of a new Regulation are never divested by a prospective enactment.

Further, the existence of this clause might bring about confusion as the word " estate " is a technical word imported into India from the English Law of real property and has attained a peculiar significance in India and especially in Hindu Law. "Widow's estate " is an estate peculiar to India among Hindus. Its significance has been fixed by judicial decisions.

Mr. M. N. Paramesvaran Pillai : May I know whether there is anything in the Bill to settle cases in which the vesting has not taken place? For example a man might have died in 1105, but the real vesting might not have taken place. Inheritance will

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[Mr. M. N. Parameswaran Pillai.]

be kept open all these years. Some persons who have got life interest may be in possession. Is there anything here to settle that case? Am I to understand that this Act will apply to cases where succession has already been effected but the real vesting has not taken place?

Mr. S. Piraviperumal Pillai: Yes.

It was because difficulties were apprehended that the proviso now contemplated, which is a well known principle of law, was not introduced in the British Indian Statute. There is no necessity for it as the Act is only prospective. Therefore I oppose the amendment.

Mr. K. Sankaralingam Pillai (*Kottarakara and Pattanapuram* cum *Sheneottah*): Sir, I oppose the amendment. It has been sufficiently explained by the mover of the Bill that the object of the Bill is only to bring the law into conformity with the existing British Indian Law. I am surprised that yet many amendments are suggested. If amendments are brought which are different from the existing law in British India it will cause a lot of difficulty for people who follow the Mitakshara Law here. We are not attempting a codification of the law after all. So I would oppose any amendment of the Bill in respect of the heirs or their order.

Mr. V. S. Arumukham Pillai: I also oppose the amendment. There is no necessity for such a clause as Mr. Narayana Aiyar proposes to add. In the title of the Bill he wants to add the words "who died intestate" along with the words "dying intestate". By this he wants to give retrospective effect to the Bill. Here the effect of the amendment is contrary to what is proposed in the short title of the Bill and it is unnecessary. As the present Bill is prospective there is no necessity to make it retrospective. If the amendment proposed to the Short Title of the Bill is accepted, then this has no meaning. That is what I wish to point out. With these words I oppose the amendment.

Mr. Kayalam Paramesvaran Pillai: Sir, the Bill as framed is intended to act only prospectively and not retrospectively. Mr. Narayana Aiyar however wants to make it clear and certain that the Bill will not act only prospectively and will not divest vested interests and therefore he moves his amendment. The amendment is not quite necessary, but if the Bill had been in the committee stage I would not have objected to it. The House must remember that if an amendment is carried in this Chamber, the Bill will have to go back to the other Chamber and the Bill will be delayed. Anyhow one amendment has already been accepted by this House. If amendments were not passed I would have without

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hesitation opposed this amendmant. But, now things have altered, and the Bill has any way to go back and the accepting of this amendment would not seriously affect the situation. This does not of course imply that this House should incorporate unnecessary amendments.

Mr. S. Piraviperumal Pillai : Did not the member oppose the other amendment ?

Mr. Kayalam Paramesvaran Pillai : Not quite. I said I had a great deal of sympathy with Mr. Narayana Aiyar's amendment and nothing more. I said further that Government would not interfere with the matter as sentiments of a community were perhaps involved. But now it is not a question of sentiment but is only a question relating only to the drafting of the Bill. In as much as this Bill has now to go back to the other Chamber Government would remain neutral in this also.

Mr. K. P. Nilakanta Pillai : May I know whether the judiciary is bound to follow the intention of a particular class as expressed by the Legislature.

Mr. Kayalam Paramesvaran Pillai : If the expressions employed in the enactment are sufficiently clear the courts will give effect to the intention.

President : Moved and seconded that in clause 3, sub-clause (*c*), omit the full stop after the end of the sub-clause, insert a comma, and add the word "or" and add the following as sub-clause (*d*) :—

"(*d*) divest any estate already vested in an heir according to the law for the time being in force".

The question to be put is whether that amendment is to be carried.

The question was put and the amendment was carried.

Mr. M. N. Paramesvaran Pillai : I demand a poll.

A poll was taken and the House divided as follows :—

AYES—10.

1	Mr. Kochikal P. Balakrishnan Tampi	7	Mr. P. Padmanabhan Tampi
2	,, J. John Kattakayam	8	,, M. N. Paramesvaran Pillai
3	,, K. N. Kesavan Namputiripad	9	,, K. Rama Varma Raja
4	,, M P. Madhavan Pillai	10	,, A. N. Visvanatha Pillai
5	,, G. Narayana Aiyar		
6	,, N. K. Padmanabha Pillai		

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NOES—8.

1	Mr. V. S. Arumukham Pillai	5	Mr. S. Piraviperumal Pillai
2	„ M. Govindan	6	„ K. Sankaralingam Pillai
3	„ K. P. Nilakanta Pillai	7	„ Komilezhathu Sankaran
4	„ C. S. Krishnasvami Aiyar	8	„ N. Ramakrishna Pillai

NEUTRALS—14.

1	Mr. S. Adam Sait	9	Mr. M. N. Narayana Menon
2	„ R. Dhanukoti Pillai	10	„ K. Padmanabha Panickar
3	„ M. Govinda Pillai	11	„ Kayalam Paramesvaran Pillai
4	„ Hajee Hassan Jacoob Sait	12	„ R. Pitchu Aiyangar
5	„ A. Kumara Pillai	13	„ G. B. E. Truscott
6	Dr. N. Kunjan Pillai	14	„ E. P. Varghese
7	Mr. K. Madhavan Pillai		
8	„ H. O. L. Marikar		

President: The result of counting is, *for* 10; *against* 8; and neutrals 14. The motion is therefore carried.

Clause 3, sub-clause (e).

Mr. G. Narayana Aiyar: The following be inserted as sub-clause (*e*).

"(*e*) or affect any rule of law by which the widows of members of a joint family are entitled to be in possession on the death of the last surviving male member."

In moving this amendment, I have to submit that when the first amendment is allowed, that is when the words "son's widow" is inserted in clause 2, it should not be understood that she has got any better position. We have also to safeguard the current of authority prevalent in Travancore so that that also should not be shaked. It is in view of that that this amendment is also moved. If widows have a coparcenary right under any law in Travancore nothing in this Regulation shall affect their rights. Simply to safeguard their position this amendment is proposed.

Mr. M. N. Paramesvaran Pillai: I second it.

Mr. Kayalam Paramesvaran Pillai: May I ask the member why this amendment is necessary in view of the provision contained in clause 1, sub-clause (2). Nothing is intended to be achieved by this amendment and nothing else is covered by this clause.

Mr. G. Narayana Aiyar: It is an additional safeguard. That is all my idea.

President: A superfluity; is that so?

Mr. G. Narayana Aiyar: It is only an additional clause.

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President: Well, Mr. Piraviperumal Pillai.

Mr. S. Piraviperumal Pillai: I am sorry, Sir, that I have to oppose this amendment. As has been stated this Bill was introduced with the object of bringing the law here in conformity with the law in British India. Further, this Bill does not deal at all with the widows of coparceners, divided or undivided, and as the Law Member pointed out it applies only in respect of property of males disposed of by will.

There is an old judicial decision reported in 5 Travancore Law Report 45—a Full Bench decision of the Travancore High Court which is certainly against the law of Mitakshara as now found throughout British India. Even here, I understand, that decision is awaiting consideration of a Fuller Bench of the Travancore High Court. In these circumstances it is not desirable to lend support to such a decision in any shape or form at present. Further it is not germane to the Bill we are discussing now. Without therefore now deviating from the Indian Act which is in operation throughout British India I would like to follow the same here also.

Mr. Kayalam Paramesvaran Pillai: If I may offer a word of advice, I should suggest that Mr. Narayana Aiyar may withdraw the amendment.

Mr. G. Narayana Aiyar: I withdraw the amendment.

President: Advice accepted and amendment withdrawn.

Now, before I leave Clause 3 I think we have to make a consequential amendment.

Mr. Kayalam Paramesvaran Pillai: With regard to that I think, that Mr. Ramakrishna Pillai may move his amendment at a later stage. The Clause as it is may be put to vote. Any further amendment may be moved at the third reading. The third reading cannot be taken to-day unless you waive the rules.

President: I do not think there is going to be a consequential amendment in Clause 3 excepting the addition of "son's widow". I suppose Mr. Narayana Aiyar may move this as a consequential amendment.

Mr. G. Narayana Aiyar: In Clause 3 sub-clause (*b*) line 1.....

Mr. Kayalam Paramesvaran Pillai: I shall move, I move that in clause 3, sub-clause (*b*), line 1, between the words "a" and "son's" the words "son's widow" be inserted.

Mr. G. Narayana Aiyar: I second it.

President: Moved and seconded that, in clause 3, sub-clause (*b*), line 1, the words "son's widow" be inserted between the words "a" and "son's"

The amendment was put to vote and carried.

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President: The amended Clause 3 will therefore read thus :—

"3. Nothing in this Bill shall,—

(*a*) affect any statute or custom having the force of law, or

(*b*) vest in a son's widow, son's daughter, daughter's daughter, or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the Mitakshara Law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir,

(*d*) divest any estate already vested in an heir according to the law for the time being in force."

That amended clause is now put to the House. The amended clause is carried.

The question is whether the amended clause do form part of the Bill.

The question was put and carried.

Preamble.

Mr. G. Narayana Aiyar: In the preamble to the Bill I propose that after the words "dying intestate" add the words "or who died intestate". In proposing this amendment I expect a good deal of controversy as other amendments of a milder character were opposed by some of the honourable members. It is necessary to convince this House wherein lies the necessity for such an amendment. It is interesting to know that the Bill in the Madras Legislative Council was introduced by the late lamented Mr. T. V. Seshagiri Aiyar after he retired from the Bench. The Bill as introduced by him, I understand, contained the preamble as follows: "An act to alter the order in which certain heirs of a Hindu deceased male dying intestate." Between the words 'Hindu' and 'male' the word 'deceased' was inserted. It so happened that he had to retire from the legislature and somebody later on took up the Bill and as a result that word 'deceased' was dropped and the Bill was passed into law.

The mover of the Bill who fully knew the controversy took it into his head that it was absolutely necessary to introduce that word also. But when the Bill emerged from the legislature and became law, courts in British India were giving divergent views on its effects on inheritance. The Allahabad High Court were of opinion that the Bill has a retrospective effect. On the other hand the Madras High Court were of a different view as is stated in 66 M. L. J. 70. See also the decisions reported in A. I. R. 1934, Patna 323, A. L. R. 1932, Lahore 851 and A. L. R. 1932, Allahabad 234. The very object of the amendment of the Bill will be frustrated unless the amendment is allowed. As it is, the proposed heir may never get a chance of enjoyment even if the Hindu male

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died recently. I will give an instance how this amendment is absolutely necessary. Suppose the male died in 1105 or just a day earlier than the passing of this Bill and his widow continues to live even after 1105 or for 50 years more. Only after the death of the widow the question of succession comes in. Should not the proposed heir then at least get a chance of enjoyment. Under the Bill, as it is, the proposed heir will never get a chance even if the male died a day earlier than the passing of the proposed Regulation since under the law in force at the date of the death of the male the proposed heir had no right. That is very hard and unjustifiable and opposed to the spirit of the Bill.

Not only there are conflicting decisions in British India about the effects of Act II of 1929 but there were a great number of articles written on the subject by eminent writers. I will read a few pages of one of these articles.

President : A few pages ?

Mr. G. Narayana Aiyar : Excuse me, Sir, a few lines.

A learned critic in 1935 A. L. R. journal at pages 5 and 7 writes as follows :—

"The Act applies to persons subject to the law of Mitakshara order of succession, in respect of the property of males and a son's daughter, daughter's daughter, sister, and sister's son, shall be entitled to rank next after a father's father and before a father's brother. As there is nothing in the Act to confine it to property of males who die only after the coming into force of the Act (21-2-1929), the Madras case refers to the preamble which " alters the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate. The grammatical emphasis on the use of the present participle is perhaps unavoidable in the interpretation of the language of an enactment. But too much regard for the literal meaning of a grammatical form of expression may lead to queer anomalies. The difficulty would have been certainly avoided by more formal language ; *e. g.* male, dying or having died intestate etc. But whoever could have foreseen that the mere preamble, which briefly sets forth the expediency of the enactment would be tortured by judicial explanation to defeat the purpose for which the Act was expressly meant. We may take it that the preamble is a precis of the statement of objects and reasons, and the one no more than the other may be called in to curtail the otherwise wide language of the Act itself. If retrospective effect is not involved, the Act applies, to all persons claiming as heirs to estates to which the sccession is to be determind. Sticking too closely to grammar, there cannot be heirs at all to a male dying intestate. Only after the event is completed, questions of heirship arise. Few, if any, at all remain long in that condition, and the Act may be stultified by the all-literal, if anomalous interpretation, that it applies only to heirs of males who are actually in the state of dying intestate and of no others. The total absence of the perfect participle (past, present or future, *viz.*, had died, having died, or shall have died) is indeed curious though the intention is clear that the death contemplated is a completed event, past or

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[Mr. G. Narayana Aiyar.]

future. It does not require the cosmology of Einstein to understand that there can never be a present completed event. It is contradiction in terms, to say that a thing has occurred, and that it is yet to occur in presenti. Either it has already transpired, when it is thrown into the past, however recently, or it has not, when it still is to come about in future. And as there are no gaps in heirship, as in the case of the succession of any other events, heirs to male dying intestate are really on his death, *i. e.*, after the event. If after that event, the widow or some other limited owner intervenes then the heirs are after that further event which like an eclipse is held to be temporary, however, long the duration. "……

' To every one of such imaginary cases, there will be thousands that should feel disappointed that the scope of an enactment is whittled down to a distant futurity. If the social conditions that prevailed in the last century were to continue, it may take half-a-century yet, for the pious wishes of the Legislature to prefer the cognates to acquire general effect. For a Hindu dying intestate after 21-2-1929, and leaving a young limited owner will have the satisfaction that fifty or sixty years hence his daughter's daughter will be heir. His elder brother who died a day earlier could not have even that, for he preferred to die earlier. Was the Indian Legislature content to deal with distant astrological possibilities, leaving the mighty present to itself? Or is it the decision in 60 M. L. J. 70 rooted on the unalterable bed-rock of Sanatana Dharma? The issue is indeed intriguing."

Mr. S. Piraviperumal Pillai: "Nothing in this Regulation shall divest……" Will not this "who died intestate" make them divest the interest?

Mr. G. Narayana Aiyar: No, it will not divest.

Mr. S Piraviperumal Pillai: Sir, I rise to oppose this amendment. If the words "who died intestate" are included this will make the Bill retrospective, that is, it will defeat the intention contained in subclause (*e*) of Clause 3 now added. It says "Nothing in this Regulation shall divest any……being in force." The words "who died intestate" will make the Bill retrospective and will make it to read that any estate already vested in an heir must be divested. Therefore, I oppose the amendment.

Mr. Kayalam Parameswaran Pillai: I think that the amendment moved by Mr. G. Narayana Aiyar is a very reasonable one. Mr. Piraviperumal Pillai's opposition is apparently based on some misunderstanding. I am sure that Mr. Piraviperumal Pillai will withdraw his opposition when the position is fully explained. Supposing a person died before the passing of the Regulation and somebody succeeds say—a daughter. When the daughter dies who should succeed to the estate? This Bill as it stands may be construed as applying only to the estates of persons who die after its passing but not in the case of succession opening into even though

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the last owner, *i. e.* the last male owner died before the passing of the Bill. The result will be that the old order of things will continue and the benefit of this legislation will not arise.

President : You mean continuity of the old line, as if the Bill had not been passed.

Mr. Kayalam Paramesvaran Pillai : Yes, Sir. I think the amendment brought forward by Mr. Narayana Aiyar is a reasonable one and will only serve, more fully serve, the purpose that Mr. Piraviperumal Pillai has himself in view. I hope he will withdraw his opposition.

Mr. N. Ramakrishna Pillai : Sir, I am at a loss to know the specific point of time at which this amendment can operate. When the succession opens, the vesting of the estate takes place. The new law must come into operation as soon as a person dies.

Mr. V. S. Arumukham Pillai : Sir, I oppose the amendment. Now the amendment gives a retrospective effect. That is according to the amendment any estate already vested may be divested.

Mr G. Narayana Aiyar : Section 3 contains a saving clause like that.

Mr. V. S. Arumukham Pillai : What is the effect of giving a retrospective effect to a Bill if it is not to divest any estate already vested ?

Mr. Kayalam Paramesvaran Pillai : In the case of a person who died before the passing of the Bill, assuming that his daughter is his heir and if the daughter dies after the passing of the Bill who will succeed next ?

President : That succession should be determined by this Bill. That seems to me to be the object of the mover of this Bill.

Mr. V. S. Arumugham Pillai : Without that amendment it means that Sir. So, if the Act is to be given a retrospective effect.....

President : It is not retrospective in the sense explained by the Law Member. It is merely for the purpose of making the application of the Bill in the case of deaths which take place after the passing of the Bill in a family where the order of succession does not prevail.

Mr. V. S. Arumukham Pillai : If we add "who died intestate" it will give a retrospective effect. And the Bill will apply to cases not only where succession opens after the Bill comes into force but also before that. What I point out is that the addition of these words means that the Act will apply to cases where succession has already opened. That means divesting the estates already vested.

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Mr. Kayalam Paramesvaran Pillai: In that case the new amendment clause will apply. In the case of before the passing of the Bill, clause (*d*) to sub clause 3 will apply.

Mr. V. S. Arumukham Pillai: What I point out is that the effect of the addition of these words will mean that the Act will apply to cases where succession has already opened; that means it is clearly giving the Act a retrospective effect. That means divesting the estates already vested.

President: He says it cannot be put like that *i. e.*, to divest any estate already vested in an heir according to the law for the time being in force.

Mr. V. S. Arumukham Pillai: According to the amendment which has been accepted no estate which has already been vested can be divested at all. Now according to the present amendment, the addition of these words, *viz.*, 'or who died intestate' any estate which has already become vested can be divested.

President: No; how did it vest? But according to the order now accepted in this Bill that is what this Bill is going to do, although I am not aware of it myself.

Mr. V. S. Arumukham Pillai: So, my point is that the addition of the words 'or who died intestate' is objectionable. Another point which I wish to make is this. As already stated the object of the Bill is to bring it in conformity with that obtaining in British India.

President: We have travelled so far away from that point already. Another milestone you are covering now.

Mr. V. S. Arumukham Pillai: Sir, when Mr. G. Narayana Aiyar himself has pointed out that it is a controversial point, by accepting the amendments we are here making experiments in law-making which is rather dangerous. And instead of bringing our laws in conformity with that obtaining in British India, we are creating divergence.

President: Moved and seconded that in the preamble of the Bill after the words "dying intestate" add the words "or who died intestate".

The amendment was put to the vote of the House and declared passed.

President: Now the question I have to put is whether this preamble, as amended, do form part of the Bill.

The motion was put to the House and declared passed.

Mr. G. Narayana Aiyar: Sir, I propose to amend the short title of the Bill by adding after the words "died intestate", the same amendment made to the preamble *viz.*, 'or who died intestate'. This is also necessary,

Mr. M. P. Madhavan Pillai. I beg to second the motion.

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President: Moved and seconded that in the title to the Bill after the words "dying intestate" add the words "or who died intestate".

The amendment was put to the House and passed.

President: The question now is whether this short title, as amended, do form part of the Bill.

The motion was put to the House and passed.

President: What do you say now, Mr. Narayana Aiyar?

Mr. G. Narayana Aiyar: It may be passed and sent back to the lower House.

Mr. Kayalam Paramesvaran Pillai: Mr. Piraviperumal Pillai is in charge of the Bill. He must make a motion.

President: Have you got anything to say, Mr. Piraviperumal Pillai?

Mr. S. Piraviperumal Pillai: I request that the Bill be passed into law.

President: To-day?

Mr. S. Piraviperumal Pillai: As early as possible.

President: Is there any objection?

Mr. Kayalam Paramesvaran Pillai: I would request you, Sir, to ask Mr. Ramakrishna Pillai who had something to say.

President: Yes; have you got any amendment to propose, Mr. Ramakrishna Pillai?

Mr. N. Ramakrishna Pillai: I may add in Clause 3, sub-clause (*e*) the words "affect any statute or custom having the force of law" after the word "law".

President: Now the Bill stands over so that we may consider any further amendments in its later stage. It is not wise to reconsider the Bill particularly when at the second reading of the Bill some important amendments have been made. The objections were taken when these amendments were being moved with the intention that the Bill according to its framer was being affected and that the provisions are travelling far ahead of similar provisions in British India. In view of that fact, I think the President will be right in saying that the Bill may be further cured in its third reading.

AMENDMENT OF STANDING ORDERS

Mr. E. P. Varghese: Sir, I have the honour to present before this House the report of the Select Committee appointed to consider the amendment to Standing Order No. 12 of the Sri Chitra State Council Standing Orders and I move that the report may be taken up for consideration.

Mr. M. N. Paramesvaran Pillai: I beg to second the motion.

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